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THE BURLINGTON INSURANCE

COMPANY (erroneously sued as

Burlington Insurance Company)

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

JENNY WOLFES,

Plaintiffs,

vs.

BURLINGTON INSURANCE
COMPANY AND DOES 1 to 25,
inclusive,

Defendants.

CASE NO. C07 04657 RMW

**DEFENDANT THE BURLINGTON
INSURANCE COMPANY'S REPLY
TO JENNY WOLFES'
OPPOSITION TO BURLINGTON'S
MOTION TO STRIKE
ALLEGATIONS OF AND PRAYER
FOR PUNITIVE DAMAGES**

Date: March 14, 2008

Time: 9:00 a.m.

Ctrm: 6

Defendant The Burlington Insurance Company hereby submits the
following Reply to Jenny Wolfes' Opposition to Burlington's Motion to Strike
Allegations of and Prayer for Punitive Damages.

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MEMORANDUM OF POINTS AND AUTHORITIES

For the reasons set forth more thoroughly in Burlington's moving papers, Plaintiff Jenny Wolfes' ("Wolfes") allegations of and prayer for punitive damages should be stricken. Moreover, it should be pointed out that Wolfes' prayers for punitive damages relate to its claims for bad faith and intentional infliction of emotional distress. These causes of action are the subject of Burlington's concurrently filed 12(b)(6) motion, also set to be heard on March 14, 2008. For the reasons set forth in the 12(b)(6) motion (and hereby incorporated by reference), Wolfes' claims should be dismissed. Consequently, Wolfes' prayers for punitive damages stemming from said claims also necessarily fail and should be dismissed.

Dated: February 29, 2008

WESTON & McELVAIN LLP

By: 

Richard C. Weston

Aaron C. Agness

Attorneys for Defendant

THE BURLINGTON INSURANCE

COMPANY (erroneously sued as

Burlington Insurance Company)

PROOF OF SERVICE

Jenny Wolfes v. Burlington Insurance Company
USDC, Northern District Case No. C07 00696

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 888 West Sixth Street, 15th Floor, Los Angeles, California 90017.

On February 29, 2008, I served the foregoing document described as: **DEFENDANT THE BURLINGTON INSURANCE COMPANY'S REPLY TO JENNY WOLFES' OPPOSITION TO BURLINGTON'S MOTION TO STRIKE ALLEGATIONS OF AND PRAYER FOR PUNITIVE DAMAGES** on all parties as indicated below:

Gerald Emanuel

HINKLE, JACHIMOWICZ, POINTER & EMANUEL

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☒ by placing the true copies thereof enclosed in sealed envelopes addressed as stated above.

☒ **BY MAIL** as follows: I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business.

☐ **BY FEDERAL EXPRESS:** I caused said envelope to be delivered to a courier authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person to whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service.

☐ **BY FACSIMILE** I sent such document from facsimile machine (213) 596-8039 on February 29, 2008. I certify that said transmission was completed and that all pages were received and that a report was generated by facsimile machine (213) 596-8039 which confirms said transmission and receipt. I, thereafter, mailed a copy to the interested party(ies) in this action by placing a true copy thereof enclosed in sealed envelope(s) addressed to the parties listed on the attached service list.

☒ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on **February 29, 2008**, at Los Angeles, California


SHARON POLK